

Appeal from decision of Arizona State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. A MC 109801 through A MC 109803.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Claim -- Mining Claims: Abandonment

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of mining claims located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of assessment work on the claims prior to Dec. 31 of each year following the calendar year in which the claims were located. Pursuant to 43 CFR 3833.0-5(m), a proof of labor or notice of intention to hold will be deemed as timely filed if it is mailed in an envelope bearing a clearly dated postmark affixed by the United States Postal Service prior to Dec. 31, the period prescribed by law, and is delivered to the proper BLM office by Jan. 19 immediately following.

APPEARANCES: J. Bradley Smith, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

J. Bradley Smith 1/ appeals the Arizona State Office, Bureau of Land Management (BLM), decision of January 28, 1983, which declared the unpatented Del Pasco, Del Pasco East, and Del Pasco West lode mining claims, A MC 109801

1/ The claims are owned by J. Bradley Smith, Cecil L. Coker, and Loren Fullmer.

through A MC 109803, abandoned and void because no proof of labor or notice of intention to hold the claims was filed with BLM prior to December 31, 1982, as required by section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

The claims were located July 18, 1980. Proof of labor for 1981 was filed with BLM October 16, 1981.

Appellant alleges he mailed the 1982 proof of labor on December 27, 1982, in a Postal Service collection box located near the corner of Stapley and Main Streets, in Mesa, Arizona.

The envelope containing the proof of labor bears the postmark: "Phoenix, AZ 850 31 Dec. 1982," and was received by BLM January 3, 1983.

The Postmaster, Phoenix, Arizona, has advised the Board that the collection box near the corner of Stapley and Main Streets in Mesa receives a very large volume of mail so it would not be possible to miss collection on any business day. The box is collected shortly after 5 p.m., 7 days a week, and the mail is then sent to Phoenix at 6:45 p.m., for postmarking.

[1] Although the regulations have been amended to permit the "timely filing" of proofs of labor mailed in envelopes bearing a clearly dated postmark affixed by the United States Postal Service before midnight December 30 and received in the proper BLM office by January 19, where the postmark affixed to appellant's envelope shows December 31, 1982, he cannot be given the benefit of the amended regulation. Accordingly, when the proof of labor was not received by BLM by December 30, 1982, and the envelope received January 3, 1983, bore a postmark of December 31, 1982, BLM had no choice under the statute but to declare the claims abandoned and void.

In view of the statement by the Postmaster in Phoenix, it is not possible to afford any weight to the allegations of appellant that he deposited the envelope containing the proofs of labor in the Postal Service collection box on December 27.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Gail M. Frazier
Administrative Judge

